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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Michael Aguilar,

10 Plaintiff,

11 v.

12 Ryan Thornell, et al.,

13 Respondents.
14

No. CV-23-00264-TUC-RCC

ORDER

15 Pending before the Court are pro se Plaintiff Michael Aguilar's Motion for Leave
16 to Depose Witnesses (Doc. 88), Motion to Extend Time to Disclose Witness List (Doc.
17 90), Motion for Leave to Undertake Officer Escalera's Deposition via Written Questions
18 (Doc. 96), Motion of Plaintiff's Avoidal [sic] in Disclosure of Witness List to Opposing
19 Counsel via Mailbox Rule (Doc. 97), and Motion to Enlarge Time for Completion of
20 Discovery (Doc. 98). Defendant Stephen Perko has also filed a Motion for Summary
21 Judgment (Doc. 99) and a Motion to Stay the Proceedings and Deadlines Set in Scheduling
22 Order (Doc. 101).

23 **I. Motion for Leave to Depose Witnesses and Motion for Leave to Undertake**
24 **Officer Escalera's Deposition via Written Questions**

25 Plaintiff filed this Motion for Leave to Depose Witnesses on July 12, 2024. (Doc.
26 88.) Defendant responded on July 25, 2024. (Doc. 94.) Plaintiff did not file a reply, and the
27 time to do so has expired. However, on August 5, 2024, Plaintiff filed a Motion for Leave
28 to Undertake Officer Escalera's Deposition via Written Depositions addressing the same

1 issues. (Doc. 96.) The Court will consider these two motions together and construe
 2 Plaintiff's Motion for Leave to Undertake Officer Escalera's Deposition via Written
 3 Depositions as a reply to Defendant's Response.¹

4 Plaintiff seeks leave to depose Sergeant Thomas Frazier, Officer D. Moises, Officer
 5 Escalera, Nurse Thomas, Nurse June, Officer Acuna, Sergeant Patel, Ross Kaplowitch, and
 6 Stephen Perko. (Doc. 88 at 1–2.) Defendant does not oppose the depositions of Sergeant
 7 Frazier, Officer Moises, Nurse Thomas, Nurse June, and Former Officer Perko (himself).
 8 (Doc. 94 at 1.) He emphasizes, however, that it is Plaintiff's burden to pay for these
 9 depositions. (*Id.*) Defendant objects to deposing Officer Acuna, Officer Escalera, Sergeant
 10 Patel, and Ross Kaplowitch because the depositions are irrelevant and because Plaintiff
 11 lacks good cause. (*Id.*)

12 Under the Federal Rules of Civil Procedure, discovery is limited to “any
 13 nonprivileged matter that is relevant to any party's claim or defense and proportional to the
 14 needs of the case” Fed. R. Civ. P. 26(b)(1). Accordingly, a party may object to a
 15 deposition notice on the grounds that the deposition is an attempt to elicit only privileged
 16 or irrelevant information. *See id.*

17 Although Plaintiff did not file a reply, he argues in his Motion for Leave to
 18 Undertake Officer Escalera's Deposition via Written Depositions that he seeks Officer
 19 Escalera's testimony because it is relevant to his assertions that he was unnecessarily
 20 transported to the medical unit where the alleged excessive force occurred on June 2, 2022.
 21 (*See* Doc. 96.) In his First Amended Complaint, Plaintiff alleges that Officer Escalera was
 22 on duty in his unit on June 2, 2022 and Officer Escalera asserted that Plaintiff said he was
 23 experiencing chest pains. (Doc. 7 at 9.) Accordingly, a deposition of Officer Escalera could
 24 reasonably result in relevant information for Plaintiff's Count III claim of excessive force.

25 Plaintiff did not file a reply or otherwise make argument as to why depositions of
 26 Officer Acuna, Sergeant Patel, and Ross Kaplowitch are relevant. In his First Amended

27 ¹ District Courts may interpret filings in a way that “create[s] a better correspondence
 28 between the substance of a *pro se* motion's claim and its underlying legal basis.” *Castro v.*
United States, 540 U.S. 375, 382–83 (2003).

1 Complaint, Plaintiff alleges that Officer Acuna oversaw the disciplinary hearing that
 2 resulted when several corrections officers filed complaints against Plaintiff for his behavior
 3 outside the medical unit on June 2, 2022. (*Id.* at 15.) He also alleges that, in relation to the
 4 incident on June 2, 2022, he filed professional conduct complaints against the officers with
 5 the Pima County Sheriff's Department through Sergeant Patel. (*Id.* at 14.) He makes no
 6 allegations that either Officer Acuna or Sergeant Patel was present on June 2, 2022 or are
 7 likely to have any information regarding the incident that Plaintiff does not have himself.
 8 Furthermore, Plaintiff made no allegations that the Court can discern regarding Ross
 9 Kaplowitch. Thus, the Court finds that Plaintiff may not depose Officer Acuna, Sergeant
 10 Patel, and Ross Kaplowitch because these depositions are likely to only elicit irrelevant
 11 information outside the scope of discovery set by Federal Rule of Civil Procedure 26(b)(1).

12 For these reasons, the Court will grant Plaintiff's Motion for Leave to Depose
 13 Witnesses in part and grant his Motion for Leave to Undertake Officer Escalera's
 14 Deposition via Written Depositions.

15 **II. Motion to Extend Time to Disclose Witness List, Motion of Plaintiff's**
 16 **Avoidal [sic] in Disclosure of Witness List to Opposing Counsel via Mailbox**
 17 **Rule, and Motion to Enlarge Time for Completion of Discovery**

18 On July 12, 2024, Plaintiff filed a Motion to Extend Time to Disclose Witness List.
 19 (Doc. 90.) Defendant responded on July 25, 2024. (Doc. 95.) Plaintiff did not reply and the
 20 time to do so has passed. Instead, on August 5, 2024, Plaintiff filed a "Motion of Plaintiff's
 21 Avoidal [sic] in Disclosure of Witness List to Opposing Counsel via Mailbox Rule" (Doc.
 22 97) and a Motion to Enlarge Time for Completion of Discovery (Doc. 98). Defendant
 23 opposes extending the time to disclose witnesses and discovery because, he argues,
 24 Plaintiff has not shown good cause given that he has been aware of who was present on
 25 June 2, 2022 since he filed his First Amended Complaint on July 14, 2023. (Doc. 95.)

26 First, the Court will deny as moot Plaintiff's "Motion of Plaintiff's Avoidal [sic] in
 27 Disclosure of Witness List to Opposing Counsel via Mailbox Rule." (Doc. 97.) In the
 28 motion, Plaintiff states that he mailed his request to extend the deadline to disclose a

1 witness list. (*Id.*) Accordingly, Defendant’s objection to his notice of depositions on the
 2 basis that Plaintiff had not disclosed a witness list is unwarranted. (*Id.*) The Court is in
 3 receipt of that request (Doc. 90) and simply had not ruled on it because it was awaiting
 4 Plaintiff’s reply. Because this Order allows additional time to disclose the witness list,
 5 Plaintiff’s “Motion of Plaintiff’s Avoidal [sic] in Disclosure of Witness List to Opposing
 6 Counsel via Mailbox Rule” is moot.

7 The Court will grant Plaintiff’s pending extension requests. Plaintiff shall have until
 8 **Friday, November 1, 2024 to disclose a witness list** to be used at trial. All **discovery** shall
 9 be completed by **Monday, December 2, 2024**. The discovery limits outlined in the Court’s
 10 Scheduling Order remain in effect. (Doc. 42 at 2.) The Court advises the parties, however,
 11 that will not delay this litigation with further discovery extensions absent extraordinary
 12 circumstances.

13 **III. Motion for Summary Judgment and Motion to Stay**

14 On August 8, 2024, Defendant filed a Motion for Summary Judgment (Doc. 99) and
 15 a Motion to Stay the Proceedings and Deadlines Set in Scheduling Order and to Prohibit
 16 All Other Filings Unrelated to Defendant Perko’s Motion for Summary Judgment (Doc.
 17 101).

18 **A. Wyatt Notice**

19 The Ninth Circuit requires the Court to provide notice to a pro se litigant when a
 20 party files a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.
 21 *Wyatt v. Terhune*, 315 F.3d 1108, 1114 n.6 (9th Cir. 2003). This section serves to alert
 22 Plaintiff that, on this date, the Court is issuing a separate order notifying Plaintiff of his
 23 specific rights and responsibilities pursuant to *Wyatt*. While ordinary Plaintiff would have
 24 thirty (30) days from the *Wyatt* notice to file a response to the Motion for Summary
 25 Judgment, given the complex discovery schedule issues addressed in this Order, the Court
 26 will **extend the deadline for Plaintiff to file his response to the Motion for Summary**
 27 **Judgment**, together with copies of grievances, sworn declarations or other admissible
 28 evidence, no later than Thursday, **January 2, 2025**.

B. Motion to Stay

In the interest of judicial economy, Defendant asks the Court to “stay the proceedings, all Scheduling Order deadlines, and prohibit the parties from filing new documents with the Court that are unrelated to the [Motion for Summary Judgment] until after the [Motion for Summary Judgment] has been decided by the Court.” (Doc. 101 at 2.) The Court will deny Defendant’s Motion to Stay because, as fully outlined in this Order, the Court is extending the discovery deadline to permit Plaintiff ample time to depose the appropriate individuals prior to responding to Defendant’s Motion for Summary Judgment. **However, to facilitate expeditious discovery, if Plaintiff seeks to file further discovery motions *prior* to the new discovery deadline, he must first seek leave of the Court outlining (1) the specific discovery issue and (2) what relief he seeks. *See* Fed. R. Civ. P. 37.**

IV. Conclusion

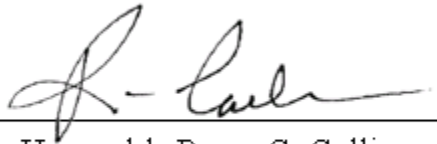
For the foregoing reasons,

IT IS ORDERED that:

- (1) Plaintiff’s Motion for Leave to Depose Witnesses is **GRANTED IN PART and DENIED IN PART**. (Doc. 88.) Plaintiff may depose Sergeant Thomas Fraizer, Officer D. Moises, Officer Escalera, Nurse Thomas, Nurse June, and Defendant Perko.
- (2) Plaintiff’s Motion to Extend Time to Disclose Witness List is **GRANTED**. (Doc. 90.) Plaintiff must disclose his witness list on or before **Friday, November 1, 2024**.
- (3) Plaintiff’s Motion for Leave to Undertake Officer Escalera’s Deposition via Written Questions is **GRANTED**. (Doc. 96.)
- (4) Plaintiff’s Motion of Plaintiff’s Avoidal [sic] in Disclosure of Witness List to Opposing Counsel via Mailbox Rule is **DENIED AS MOOT**. (Doc. 97.)
- (5) Plaintiff’s Motion to Enlarge Time for Completion of Discovery is **GRANTED**. (Doc. 98.) All **discovery** shall be completed by **Monday, December 2, 2024**.

1 (6) Defendant's Motion to Stay the Proceedings and Deadlines Set in Scheduling
2 Order is **DENIED**. (Doc. 101.) However, if Plaintiff seeks to file further
3 discovery motions *prior* to the new discovery deadline, he must first seek leave
4 of the Court outlining (1) the specific discovery issue and (2) what relief he
5 seeks.

6 Dated this 9th day of August, 2024.

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12 Honorable Raner C. Collins
13 Senior United States District Judge
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